

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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IGNITE SPIRITS, INC.,

Case No. 2:21-CV-1590 JCM (EJY)

Plaintiff(s),

ORDER

V.

CONSULTING BY AR, LLC,

Defendant(s).

Presently before the court is counter-claimant Consulting by AR, LLC's motion for attorney's fees and non-taxable costs. (ECF No. 191). Counter-defendants Ignite Spirits, Inc. and Ignite International Brands, LTD. filed a response (ECF No. 194), to which Consulting by AR, LLC replied (ECF No. 207).

Also before the court is Ignite International Brands, LTD.’s “objections” to the magistrate judge’s civil contempt order. (ECF No. 180). Consulting by AR, LLC filed a response (ECF No. 184), and Ignite International Brands, LTD moved for leave to file a reply in support of its objections (ECF No. 186).

For the reasons set forth below, the court GRANTS in part and DENIES in part Consulting by AR, LLC's motion for fees and costs, and DENIES as MOOT Ignite International Brands, LTD.'s objections and request for leave to file a reply.

I. Background

This is a contract dispute removed to federal court on diversity jurisdiction. (ECF No. 8). On summary judgment, the court ruled in favor of Consulting by AR, LLC (“Consulting”) and against Ignite Spirits, Inc. (“Spirits”) and Ignite International Brands, LTD (“Brands”) (collectively, the “Ignite counter-defendants”), and judgment was entered accordingly. (ECF No. 11).

1 182, 185). The judgment awarded Consulting \$1,611,655.09 plus pre-judgment interest. (ECF
 2 No. 185).

3 Before judgment was entered, the magistrate judge in this case had found Brands in civil
 4 contempt and imposed sanctions in the form of attorney's fees. (ECF No. 174). Brands filed an
 5 "objection" to the magistrate judge's order, which has been briefed but not yet addressed by this
 6 court. (ECF No. 180).

7 Following the entry of judgment in its favor, Consulting moved for an award of attorney's
 8 fees and non-taxable costs under the terms of the Letter Agreement (the operative contract in this
 9 case) (ECF No. 191) and also filed its bill of costs (ECF No. 187). Costs were taxed in favor of
 10 Consulting, and this court denied the Ignite counter-defendants' motion to retax costs, finding that
 11 Consulting was the only prevailing party in this case. (ECF No. 223, at 4).

12 **II. Consulting's Motion for Attorney's Fees**

13 The court addresses Consulting's motion for attorney's fees first, before addressing the
 14 magistrate judge's contempt order.

15 **A. Legal Standard**

16 Federal courts sitting in diversity apply the relevant state substantive law and federal
 17 procedural law unless state law conflicts with a valid federal statute or procedural rule. *E.g.*,
 18 *Feldman v. Allstate Ins. Co.*, 322 F.3d 660, 666 (9th Cir. 2003) (quoting *Erie R.R. v. Tompkins*,
 19 304 U.S. 64, 78 (1938)); *MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197 F.3d 1276, 1282 (9th
 20 Cir. 1999). Both "the right to fees" and "the method of calculating the fees" are substantive issues
 21 governed by state law. *Close v. Sotheby's, Inc.*, 909 F.3d 1204, 1208 (9th Cir. 2018) (citing
 22 *Mangold v. California Pub. Utilities Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995)). The right to—
 23 and calculation of—prejudgment interest is similarly governed by state law. *Oak Harbor Freight
 24 Lines, Inc. v. Sears Roebuck, & Co.*, 513 F.3d 949, 961 (9th Cir. 2008)

25 Federal law dictates only the procedure for *requesting* attorney's fees and costs. *Carnes
 26 v. Zamani*, 488 F.3d 1057, 1059 (9th Cir. 2007); *see also MRO Commc'ns, Inc.*, 197 F.3d at 1280–
 27 81 (explaining that Rule 54(d)(2) creates a procedure to request attorney's fees, not a right to
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1 recover attorney's fees). Accordingly, Rule 54(d), Local Rule 54-14, and Local Rule 54-11 apply
 2 to requests for attorneys' fees even in diversity cases.

3 Under Rule 54(d), the party seeking attorney's fees must (1) file the motion no later than
 4 14 days after the entry of judgment; (2) specify the judgment and the statute, rule, or other grounds
 5 entitling the movant to the award; (3) state the amount sought or provide a fair estimate of it; and
 6 (4) disclose, if the court so orders, the terms of any agreement about fees for the services for which
 7 the claim is made. FED. R. CIV. P. 54(d)(2). Under this court's local rules, fee requests must
 8 include (1) "a reasonable itemization of the work performed;" (2) "an itemization of all costs
 9 sought to be charged as part of the fee award;" (3) a brief summary of the time and labor required,
 10 the customary fee, awards in similar cases, and other items set forth in LR 54-14(a)(3); and (4) an
 11 attorney affidavit authenticating the information contained in the motion for fees. LR 54-14.
 12 Oppositions "must set forth the *specific* charges that are disputed and state with *reasonable*
 13 *particularity* the basis for the opposition," and must also include attorney affidavits. LR 54-14(d)
 14 (emphasis added).

15 **B. Consulting is entitled to attorney's fees and nontaxable costs.**

16 The parties do not disagree that Nevada law applies to their dispute. Nevada follows the
 17 "American" rule that attorney's fees "may not be awarded absent a statute, rule, or contract"
 18 expressly authorizing such an award. *Thomas v. City of N. Las Vegas*, 127 P.3d 1057, 1063 (Nev.
 19 2006). Nevada courts honor parties' agreements to "provide for attorney fees by express
 20 contractual provisions." *Pardee Homes of Nevada v. Wolfram*, 444 P.3d 423, 427 (Nev. 2019). If
 21 the court determines that the contractual language is clear and unambiguous, "the contract will be
 22 enforced as written." *Id.*

23 The Letter Agreement unambiguously stipulates that if litigation occurs "relating to this
 24 Letter Agreement, the losing party will pay the prevailing party's costs and expenses of such
 25 litigation, including but not limited to reasonable attorney's fees." (ECF No. 86-1, at 3 ¶ 6). A
 26 party prevails "if it succeeds on *any significant issue* in litigation which achieves some of the
 27 benefit it sought in bringing suit." *Pardee Homes of Nevada*, 444 P.3d at 427 (citations omitted).
 28 The party "need not succeed on every issue," and the term is "broadly construed so as to encompass

1 plaintiffs, counterclaimants, and defendants.” *LVMPD v. Blackjack Bonding*, 343 P.3d 608, 615
 2 (Nev. 2015); *Valley Elec. Ass'n v. Overfield*, 106 P.3d 1198, 1200 (Nev. 2005).

3 The Ignite counter-defendants do not dispute that the Letter Agreement unambiguously
 4 provides for an award of attorney’s fees to the prevailing party and do not dispute that Consulting
 5 is the prevailing party. (See generally ECF No. 194). As the court awarded Consulting all its
 6 requested damages against the Ignite counter-defendants, it is undoubtedly the prevailing party
 7 and entitled to an award of reasonable attorney’s fees under the unambiguous terms of the Letter
 8 Agreement. The *amount* of reasonable attorney’s fees that Consulting is entitled to is discussed
 9 further below.

10 Consulting also requests non-taxable costs under the Letter Agreement. (ECF No. 191, at
 11 9). The Ignite counter-defendants argue that Consulting is not entitled to the litigation costs it is
 12 seeking because they are not taxable under Rule 54 and 28 U.S.C. § 1920. (ECF No. 194, at 6–7).
 13 To support their argument, the Ignite counter-defendants cite an Arizona case and two Ninth
 14 Circuit cases applying substantive federal law. But these authorities are inapplicable to *this* case,
 15 which is analyzed under substantive Nevada law. Furthermore, Consulting is requesting an award
 16 of *non-taxable* costs based on the terms of the Letter Agreement, making Rule 54 and 28 U.S.C. §
 17 1920 inapplicable to the court’s analysis.

18 Cost-shifting provisions, such as the one present here, are interpreted like any other
 19 contract provision, and the court seeks to affect the “intent of the contracting parties.” *See Davis*
 20 *v. Beling*, 278 P.3d 501, 515 (Nev. 2012) (citations omitted). The Letter Agreement
 21 unambiguously states that the prevailing party is entitled to the “costs and expenses” of litigation,
 22 “*not limited to* reasonable attorney’s fees. (ECF No. 86-1, at 3 ¶ 6) (emphasis added). Moreover,
 23 Local Rule 54-14 explicitly contemplates an award of costs not otherwise taxable under Rule
 24 54(d). LR 54-14(a)(2). The court therefore finds that Consulting is entitled to non-taxable
 25 litigation costs under the Letter Agreement.

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1 Consulting requests \$3,561.23 in non-taxable costs. (ECF No. 191, at 9).¹ The Ignite
2 counter-defendants argue that these costs (which include e-discovery costs for processing cell
3 phone images and emails; Bates labeling documents; obtaining documents from California, and
4 travel expenses associated with a deposition in Connecticut) should not be awarded because they
5 were unnecessary to the litigation. (ECF No. 194, at 7; ECF Nos. 191-4–191-9). Specifically,
6 they argue that the \$1,898.65 incurred by Consulting’s attorneys to travel to Connecticut for a
7 deposition conducted virtually was unnecessary. (*Id.*). As Consulting does not dispute this or
8 provide the court with an itemization or explanation of its requested non-taxable costs, the court
9 will deduct \$1,898.65 from its requested non-taxable costs. Consulting is accordingly awarded
10 \$1,662.58 in non-taxable costs.

B. Amount of reasonable attorney's fees.

12 Nevada district courts have “great discretion” when determining the amount of attorney’s
13 fees to award, which is “tempered only by reason and fairness.” *Albios v. Horizon Communities,*
14 *Inc.*, 132 P.3d 1022, 1034 (Nev. 2006) (citations omitted). “In determining the amount of fees to
15 award, the district court can follow any rational method so long as it applies the *Brunzell* factors.”
16 *Smith v. Zilverberg*, 481 P.3d 1222, 1231 (Nev. 2021) (referencing *Brunzell v. Golden Gate Nat.*
17 *Bank*, 455 P.2d 31, 33 (Nev. 1969)).

18 The *Brunzell* factors are: “(1) the qualities of the attorney, (2) the character of the work
19 done, (3) the actual work performed by the attorney, and (4) the work achieved.” *Id.* (citations
20 omitted). One “rational method” the court may employ to determine the reasonable fee amount is
21 the lodestar method, which involves “multiplying the number of hours reasonably spent on the
22 case by a reasonable hourly rate.” *Shuette v. Beazer Homes Holdings Corp.*, 124 P.3d 530, 549
23 (Nev. 2005) (quotations omitted). But regardless of the court’s chosen method, its award of
24 attorney’s fees will be upheld so long as it is “supported by substantial evidence” and guided by
25 the *Brunzell* factors. *Id.*

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¹ This number changes to \$6,200.88 in Consulting's reply in support of its motion for fees and costs. (ECF No. 207, at 11). The court will disregard this second number as it was submitted in a reply, and because it is not supported by Consulting's submitted exhibits.

1 1. *Lodestar—reasonable hours*

2 Consulting requests \$156,842.50 in reasonable attorney's fees. (ECF No. 191, at 5). In
 3 total, its attorneys billed 506.1 hours of work. (ECF Nos. 191-1, 191-2). After considering the
 4 actual work performed and the character of that work, the court finds this to be a reasonable number
 5 of hours spent in this case. Many, if not a majority, of the hours spent in this case were necessitated
 6 by the counter-defendants' litigation tactics. For example, Consulting was required to conduct
 7 extensive briefing in response to the counter-defendants' objections and requests for stays of
 8 various magistrate judge orders (ECF Nos. 57, 121, 124, 133, 134); motions to dismiss (ECF Nos.
 9 23, 29); objections to the bill of cost (ECF No. 149); motions for reconsideration (ECF Nos. 156,
 10 195); and emergency motions (ECF Nos. 58, 134, 136). Consulting also expended considerable
 11 time attempting to resolve various discovery disputes, which appear to have been caused by the
 12 counter-defendants.²

13 Regarding the work achieved, Consulting's attorneys successfully defended against many
 14 of the counter-defendants' various objections and motions. (E.g., ECF Nos. 174, 219, 220, 221).
 15 Consulting's attorneys also successfully argued for summary judgment in favor of Consulting,
 16 resulting in an award of damages. (ECF No. 182). The *Brunzell* factors therefore lead the court
 17 to its ultimate finding that the number of hours expended by Consulting's attorneys in this case
 18 was reasonable.

19 The Ignite counter-defendants argue that "approximately 295" of Consulting's claimed
 20 506.1 hours are "duplicative." (ECF No. 194, at 6). But they do not point to any specific charges
 21 that support their contention that over half of Consulting's claimed hours are "duplicative." (See
 22 generally, *id.*). Furthermore, the Ignite counter-defendants have not submitted affidavits in
 23 support of this factual contention, as required under LR 54-14. Having conducted an independent
 24 review of Consulting's submitted charges, the court finds that the Ignite counter-defendants' claim
 25 is unsupported, and Consulting's reported 506.1 hours is reasonable. (See ECF No. 191-2).

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28 ² As the court noted, one such dispute even resulted in the court finding Brands in civil
 contempt. (ECF Nos. 174, 181).

1 2. *Lodestar—reasonable hourly rate*

2 Most of the hours in this case were billed by law clerks, associates, and non-partner counsel
 3 at hourly rates between \$225 and \$365. (ECF No. 191-1). One partner billed less than one hour
 4 of work at an hourly rate of \$450, and a senior partner billed 6.9 hours at a discounted rate of \$650.
 5 (*Id.*). Considering the *Brunzell* factors, the court finds these hourly rates reasonable.

6 Regarding the character of the work, the actual work performed, and the work achieved:
 7 the billing logs show that much of the work was delegated to associates (or paralegals) who billed
 8 at a lower rate than partners, which the Nevada Supreme Court has found to support a finding that
 9 the hourly rate was reasonable. *Smith*, 481 P.3d. at 1231. Consulting’s attorneys also achieved an
 10 award of over a million dollars in damages—far above the total attorney’s fees requested.

11 The characteristics of Consulting’s attorneys also support their reported hourly rates. The
 12 primary attorneys who worked on this case were associates, and their hourly rates corresponded to
 13 their relative lack of experience. Mr. Berkman, who graduated from law school *magna cum laude*
 14 in 2021, charged an hourly rate of \$295. (ECF No. 191-1). Mr. Downing, who graduated from
 15 law school in 2015, generally charges an hourly rate of \$375 but discounted his rate to \$300. (*Id.*).
 16 The senior attorney responsible for this case, Mr. Pearson, discounted his rate to \$350. (*Id.*). Mr.
 17 Pearson has 16 years of experience in complex litigation and corporate governance. (ECF No.
 18 191, at 7). The court finds that these hourly rates are reasonable. Accordingly, the court awards
 19 Consulting reasonable attorney’s fees in the amount of \$156,842.50.³

20 **III. Brands’s Appeal of the Magistrate Judge’s Contempt Order**

21 On March 16, 2023, Magistrate Judge Youchah entered an order finding Brands in civil
 22 contempt for deliberately disobeying the court’s February 28, 2023, order, which had followed a
 23 failure to comply with an August 12, 2022, order to file certain documents under seal for *in*
 24 *camera* review by the court. (ECF No. 174, at 3). In the August 12th order, the court clearly
 25 warned Brands that “continued conduct based on positions contrary to well[-]established law may
 26 not be deemed in good faith...[and] failure to comply with this [o]rder will be deemed willful and

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 28 ³ Insofar as the parties have raised other arguments that are not specifically addressed in
 this order, the court has considered the same and concluded that they either do not present a
 competent basis for relief or need not be reached given the court’s ultimate ruling.

1 therefore potentially worthy of contempt.” (ECF No. 168, at 5–6). Despite these clear warnings,
 2 Brands continued its disobedience of court orders. The magistrate judge therefore found Brands
 3 in civil contempt and imposed sanctions in the form of attorney’s fees and costs incurred by
 4 Consulting for the discovery dispute that spawned the sanctions. (ECF No. 174, at 4).

5 Even after the imposition of sanctions, Brands failed once more to properly comply with
 6 court orders, and the magistrate judge entered a minute order instructing Brands of the appropriate
 7 procedure for complying with the court’s March 16, 2023, civil contempt order. (ECF No. 178).
 8 However, on March 30, 2023, the magistrate judge entered a stay of the civil contempt order after
 9 Brands finally submitted the required documents for *in camera* review by the court. (ECF No.
 10 181).

11 Brands then filed an “objection” to the magistrate judge’s civil contempt order, arguing
 12 that it should be allowed to show cause why it was not in contempt. (ECF No. 180). It also filed
 13 a motion for leave to file a reply in support of this “objection.” (ECF No. 186). Consulting
 14 responded, arguing that Brands’s “bad faith conduct throughout the litigation process” necessitates
 15 the imposition of monetary sanctions to “send a clear message...that such bad-faith conduct is
 16 unacceptable and will not be tolerated in legal proceedings.” (ECF No. 184, at 7).

17 The court is sympathetic to Consulting’s position but finds that the imposition of monetary
 18 sanctions in the form of attorney’s fees is no longer necessary given the court’s award of attorney’s
 19 fees to Consulting under the terms of the Letter Agreement. Included in that award are the
 20 attorney’s fees that would have been awarded as sanctions under the contempt order. (See ECF
 21 No. 191-2). Accordingly, the court vacates the imposition of monetary sanctions in the magistrate
 22 judge’s March 16, 2023, contempt order. (ECF No. 174).

23 **IV. Conclusion**

24 Accordingly,

25 **IT IS HEREBY ORDERED, ADJUDGED, and DECREED** that Consulting by AR, LLC’s
 26 motion for attorney’s fees and non-taxable costs (ECF No. 191) be, and the same hereby is,
 27 **GRANTED** in part and **DENIED** in part, consistent with the foregoing. Specifically, the court
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1 awards \$156,842.50 in attorney's fees and \$1,662.58 in non-taxable costs to Consulting by AR,
2 LLC.

3 The court VACATES the imposition of monetary sanctions in the magistrate judge's
4 March 16, 2023, contempt order. (ECF No. 174).

5 IT IS FURTHER ORDERED that Ignite International Brands, LTD.'s "objections" to the
6 magistrate judge's civil contempt order (ECF No. 180) and Ignite International Brands, LTD's
7 motion for leave to file a reply in support of its objections (ECF No. 186) are DENIED as MOOT.

8 DATED March 27, 2024.

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11 UNITED STATES DISTRICT JUDGE

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